Supreme Court, U.S.
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No. 96-10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

IN THE MATTER OF:
CLDC MANAGEMENT CORPORATION,

debtor,

APPEAL OF IRENE M. GESCHKE and CLARENCE O. GESCHKE

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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Respondents, LaSalle National Bancorp, Inc. and Union Realty Mortgage Co. Inc.,[1] respond in opposition

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[1] The parent company of respondent LaSalle National Bancorp, Inc. is LaSalle National Corporation. The respondent Union Realty Mortgage Co., Inc. is a wholly owned subsidiary of respondent LaSalle National Bancorp, Inc. LaSalle National Corporation's parent is ABN AMRO, North America, Inc. The parent of ABN AMRO, North America, Inc. is ABN AMRO Bank, N.V. LaSalle National Bank is a party to the proceedings in this case solely by virtue of its formerly having been a trustee. LaSalle National Bank is a wholly owned subsidiary of LaSalle National Bancorp, Inc.

to the Geschkes' petition for a *writ of certiorari* and state:

STATEMENT OF THE CASE

Respondents adopt the Seventh Circuit's statement of the case from its opinion affirming the judgment of the district court, and incorporate it by reference. In addition, respondents make the following corrections to petitioners' statements of fact:

- The district court never stated that the jury instructions for the first phase of the trial were incomplete; the court stated that the jury would not be instructed on any issues that did not need to be considered unless the trial reached phase two. (Pet. 6).
- The district court did not rule that a false representation relating to a future fraudulent scheme is not actionable; the court ruled that it is not fraud to make false statements believing them to be true and only learning later that they are false. (Pet. 9).
- The district court did not fail to instruct the jury on petitioners' breach-of-duty-of-good-faith claim; the district court expressly instructed the jury on that issue. (Pet. 12).
- The district court did not bar petitioners from introducing the exhibit showing Jack Organ's criminal past; the court permitted petitioners to introduce a certified statement of Organ's conviction, but excluded certain hearsay documents petitioners had stapled to the certified statement. (Pet. 13-14).
- The district court did not find during the 1993 discovery hearings or otherwise that defendants "destroyed" documents which the Seventh Circuit said they should have maintained. (Pet. 15).

ARGUMENT

1. The decision of the Seventh Circuit Court of Appeals does not raise the first two questions petitioners present for review, namely "whether the Court of Appeals condoned attorney conflict of interest and defendants' interference with petitioners' legal counsel", and "whether the Court of Appeals condoned the district court's extreme delay in bringing this case to trial and its repeated failure to report the case pursuant to the requirements of 28 U.S.C. §§ 471, Chapter 23, *et seq.* [sic]". (Pet. iii). Petitioners acknowledge that they deliberately failed to raise those issues in their appeal of the merits before the Seventh Circuit and thus those issues are waived. (Pet. 18, 21); *See*, *Delta Airlines v. August*, 450 U.S. 346, 362 (1981).

2. Nor do the first two questions presented for review implicate a drastic departure from the usual and accepted course of judicial proceedings by the courts below. The district court found that petitioners had failed to introduce any evidence of a conflict or any resulting prejudice. Likewise, petitioners—not the district court—caused the "delays" that petitioners are complaining about. Among other things, petitioners made numerous continuance requests, brought two petitions for a *writ of mandamus* before the Seventh Circuit, and petitioned this Court on a prior occasion for a *writ of certiorari*. Moreover, delay is not a ground for reversing the Seventh Circuit's decision on the merits, and petitioners do not have a right of action under the Civil Justice Reform Act of 1990. *See*, 28 U.S.C. § 471, *et seq*.

3. The third and fourth questions presented for review are based on routine procedural matters that petitioners claim the Seventh Circuit decided "in such a way

that departs from controlling decisions of this Court." (Pet. 23). Petitioners simply argue that the Seventh Circuit permitted a misapplication of the correct law by the district court, not that the Seventh Circuit or district court misstated the law. Petitioners first complain about the district court's choice of jury instructions and the decision to use special jury verdict forms. Formulation of jury instructions and the decision to use special verdict forms are within the discretion of the district court as authorized by Federal Rules of Civil Procedure 51 and 49(a). Petitioners next complain about the district court's exclusion of certain exhibits. District courts rule daily on evidentiary matters and the courts' decisions are not disturbed unless there is an abuse of discretion.

4. Petitioners fail to raise any issues of importance in their petition for a *writ of certiorari*. There was no error in either the Seventh Circuit's or district court's rulings, and thus there is no basis for invoking this Court's jurisdiction.

The petition for a *writ of certiorari* should be denied.

Respectfully submitted,

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